

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

8 ROBERT LEE KIMMELL,)
9 Petitioner,) 3:12-cv-0304-ECR-WGC
10 vs.)
11 JACK PALMER, *et. al.*,)
12 Respondents.)
13 /

14 Petitioner Robert Kimmell has paid the filing fee and filed a petition for a writ of
15 habeas corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1). The petition shall be served upon
16 respondents. However, respondents will not be required to answer the petition at this time, because
17 it appears the petition was submitted outside the applicable limitations period. The petition is likely
18 subject to dismissal on that basis.

25 According to the habeas petition, petitioner was convicted on December 1, 2004.
26 Petitioner's direct appeal became final on November 22, 2005. The time period for filing a federal

1 habeas petition was tolled until that date. Petitioner filed a state habeas corpus action on April 16,
 2 2006, and review of that petition concluded on October 6, 2010. The time period between
 3 November 22, 2005 and April 16, 2006, or 145 days, was not tolled. The time period between filing
 4 the state petition and conclusion of review of the petition would be tolled. However, the limitations
 5 period began to run again on October 6, 2010, and petitioner had 220 days to file his federal habeas
 6 petition. The instant federal habeas action was initiated on June 5, 2012, some 600 days after the
 7 conclusion of his post-conviction review and 380 days beyond the expiration of the one-year
 8 limitations period. The petition was filed beyond the one-year time limitation contained in the
 9 statute.

10 Petitioner may be entitled to equitable tolling of the one-year limitations period if he
 11 can establish that he diligently pursued his rights and some extraordinary circumstance made it
 12 impossible to file a timely petition. *See Calderon v. United States District Court (Beeler)*, 128 F.3d
 13 1283, 1288 (9th Cir. 1997), *overruled in part on other grounds, Calderon v. United States District*
 14 *Court (Kelly)*, 163 F.3d 530 (9th Cir. 1998); *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). The
 15 petitioner will be given the opportunity to show that either the instant petition was filed within the
 16 one-year statute of limitations, or that he is entitled to equitable tolling of the time limitation.

17 **IT IS THEREFORE ORDERED** that the Clerk shall **ELECTRONICALLY**
 18 **SERVE** a copy of the petition for writ of habeas corpus (and a copy of this order) upon respondents.

19 **IT IS FURTHER ORDERED** that petitioner shall have **thirty (30) days** from the
 20 entry of this Order to file such proof he may have to demonstrate that the petition for writ of habeas
 21 corpus was timely filed within the one-year time limitation or that he is entitled to equitable tolling
 22 of the time period. If petitioner is unable to demonstrate that the petition for writ of habeas corpus
 23 was filed within the limitations period, the Court will enter an order dismissing the petition.

24 DATED this 14th day of June 2012.


 25 Edward C. Reed.
 26 UNITED STATES DISTRICT JUDGE